



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: February 19, 2010

CBCA 1402

NETWORK AMBULANCE SERVICES,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

David Annecharico and Jennifer C. Strawn of Sand & Saidel, P.C., Philadelphia, PA, counsel for Appellant.

Kate Gorney, Office of Regional Counsel, Department of Veterans Affairs, Philadelphia, PA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **STERN**, and **STEEL**.

STERN, Board Judge.

Network Ambulance Services (appellant or Network) appeals the denial by the contracting officer of the Department of Veterans Affairs (VA) of appellant's claim for contract reinstatement and proposal preparation and other costs and damages. The case has been submitted on the record in accordance with Board Rule 11 (48 CFR 6101.11 (2009)). Appellant has also moved for summary relief. The sole issue before the Board at this time is that of entitlement.

Background

On January 3, 2001, the VA awarded Physician's Choice Ambulance (Network's predecessor in interest) a contract to provide ambulance services to the Department of Veterans Affairs Medical Center, Philadelphia, Pennsylvania. The contract was a requirements contract and contained the "Requirements (Oct 1995)" 52.216-21 clause providing:

The quantities of supplies or services specified in the schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Governments [sic] requirements do not result in orders in the quantities described as "estimated" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

The contract's pricing schedule contained various rates for ambulance trips depending upon the location of the patient who was to be transported. This schedule also provided an estimated quantity for trips within the Philadelphia city limits or to various other listed localities. The pricing schedule also included line items providing for payment for certain types of medical care. The contract pricing covered the base and two option years.

The contract also contained two clauses pertaining to the extension of services and the contract:

B.5 52.217-8 Option to Extend Services. (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

B.6 52.217-9 Option to Extend the Term of the Contract. (MAR 2000)

(a) The Government may extend the terms of this contract by written notice to the Contractor within 30 days *provided*, that the Government give the Contractor a preliminary written notice of its intent to extend at least 60

days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed three (3) years.

Appeal File, Exhibit 2.

By modifications effective February 1, 2002, and February 1, 2003, the parties extended the contract through January 31, 2003, and January 31, 2004, respectively. Respondent's Submission, January 13, 2010.¹ During February 2004 the parties extended the contract through April 30, 2004, to allow the Respondent "time to prepare a new solicitation for ambulance service(s)." *Id.* Thereafter, seven similar modifications were executed, extending the contract through May 31, 2005. *Id.* These modifications stated that the purpose of the extensions was to give the VA time to work on or complete the award of a new ambulance services contract.

On May 16, 2005, with the extended contract soon to expire, the parties executed a modification increasing the contract pricing under the "same terms and conditions of the contract." The modification provided that it would "remain in effect until you have been notified of a new contract award and the transition has been completed from old to a new contractor." Respondent's Submission, January 13, 2010. This modification referenced the "Option to Extend Services" clause, *supra*.

On March 19, 2007, the VA issued a new solicitation for the ambulance services that Network was providing. Network submitted a proposal to the VA seeking award of that contract. On November 13, 2007, the VA awarded the follow-on contract to TransCare ML, Inc. (TransCare ML). The contract award was effective December 1, 2007. By letter of November 14, 2007, the VA informed appellant that it had not been selected for award of the contract and that the contract had been awarded to TransCare ML. On November 19, 2007, the VA issued a "debriefing" letter to appellant detailing the reasons for award of the contract to TransCare ML.

¹ Pursuant to the direction of the Board, the VA submitted all contract modifications to the contract.

On December 1, 2007, Network was orally informed that the TransCare ML contract was effective December 1, 2007, and TransCare ML would begin providing services on December 2, 2007. Appeal File, Exhibit 6; Declaration of Peter Santangelo (July 14, 2009), ¶ 7; Respondent's Admission 28. The last day that Network provided ambulance services was December 1, 2007. Santangelo Declaration; Respondent's Admission 30.

On November 29, 2007, Network filed a bid protest with the VA regarding award of the contract to TransCare ML. By letter of April 24, 2008 from the VA, Network was informed the VA found inconsistencies in its procurement evaluation and that it would resolicit for the ambulance services. The letter dismissed the protest. Network then filed a protest with the United States Government Accountability Office (GAO). By decision dated May 15, 2008, GAO denied the protest. *Network Ambulance Services*, B-400133; Appeal File, Exhibit 4. GAO stated that the protest was academic based on the corrective action taken by the VA.

By letter of April 25, 2008, Network requested "immediate reinstatement as the incumbent contractor." Appellant's Supplemental Appeal File, Exhibit 4.

On June 8, 2008, Network filed a claim with the VA. As part of the claim, Network filed an invoice for services rendered on December 1, 2007. The contracting officer denied appellant's claims except for payment for the services rendered by Network on December 1, 2007, upon submission of an invoice and verification that the services listed on the invoice were provided.

The VA did not immediately resolicit for the ambulance services. The VA executed several modifications with TransCare ML to the contract between those entities. The record reflects that a modification executed on February 23, 2009, extended the contract through March 31, 2009.

Discussion

Network alleges that the VA breached the contract (modification 12) and that as a matter of law it is entitled to damages. Network submits that modification 12 extended the contract until a new contract was awarded and there was transition to a new contractor, that the follow-on contract was deficient and did not come into existence, and that its contract with the VA remained in full force and, therefore, that the VA was required to reinstate that contract.

The contract with Network was extended numerous times, with the last extension providing that it would end upon notification of award and transition to another

contractor. The VA issued a solicitation and awarded the contract to another contractor (TransCare ML). Network was notified of the award to TransCare ML. Though Network protested this award and the VA admitted deficiencies in its solicitation process, the contract became effective with the award. There was complete transition to TransCare ML. At no time was any action taken that canceled the contract awarded to TransCare ML. Both the VA and GAO denied the Network protest. The record reflects that the TransCare ML contract was still in existence over one year after the award.

The Network contract with the VA terminated by its very terms. There was no breach of the contract by the VA. Network's motion for summary relief is denied.

Network is entitled to be paid for services it rendered for the VA on December 1, 2007, the day prior to the date that TransCare ML began providing ambulance services.

Decision

The appeal is **DENIED**.

JAMES L. STERN
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

CANDIDA S. STEEL
Board Judge